DOCUMENT 6

STATUTES APPLICABLE TO THE MISSOURI UST PROGRAM

Clean copies of all statutes applicable to the Missouri UST program should be attached here, including:

(1) Revised Statutes of Missouri, Sections 260.500 through 260.550

(2) Revised Statutes of Missouri, Sections 319.100 through 319.139

(3) Revised Statutes of Missouri, Section 507.90

(4) Revised Statutes of Missouri, Chapter 644

Chapter 319
GENERAL SAFETY REQUIREMENTS

UNDERGROUND FACILITY SAFETY AND DAMAGE PREVENTION

OVERHEAD POWER LINE SAFETY

UNDERGROUND AND PETROLEUM STORAGE TANKS--REGULATION

PIPELINES

CROSS REFERENCES

Asbestos removal, RSMo 643.253 to 643.255
Boiler safety regulation, RSMo 650.215 to 650.295
Earthquake and disaster volunteer program, expenses, immunity from liability, RSMo 44.023
Emergency planning committees, local hazardous substance, RSMo 292.600 to 292.602
Emergency response commission, hazardous substances in the workplace, duties, RSMo 292.602
Explosives, temporary storage in the workplace, notification, duties, RSMo 292.617
Seismic safety commission, powers, programs, duties, RSMo 44.225 to 44.237

UNDERGROUND AND PETROLEUM STORAGE TANKS--REGULATION

CROSS REFERENCE

Liability on lender-owners for precedent environmental conditions state preemption of legislation, exception underground storage tank funds, RSMo 427.041 Petroleum and petroleum products, defined as a hazardous substance when not in tanks eligible under storage tank insurance fund, RSMo 260.565

319.100. Definitions.--

As used in sections 319.100 to 319.137, the following terms mean:

(1) "Aboveground storage tank", any one or a combination of tanks, including pipes connected thereto, used to contain an accumulation of petroleum and the volume of which, including the volume of the aboveground pipes connected thereto, is ninety percent or more above the surface of the ground, and is utilized for the sale of products regulated by chapter 414, RSMo. The term does not include those tanks described in paragraphs (a) to (k) of subdivision (16) of this section or aboveground storage tanks at petroleum pipeline terminals;

(2) "Board", the board of trustees of the petroleum storage tank insurance fund;

(3) "Conference, conciliation and persuasion", a process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;

(4) "Department", the department of natural resources;

(5) "Fund", the petroleum storage tank insurance fund established pursuant to section 319.129;

(6) "Guarantor", any person, other than the owner or the operator, who provides evidence of financial responsibility;

(7) "Minor violation", a violation which possesses a small potential to harm the environment or human health or cause pollution, was not knowingly committed, and is not defined by the United States Environmental Protection Agency as other than minor;

(8) "Operator", any person in control of, or having responsibility for, the daily operation of the tank;

(9) "Owner", shall include any person who owned an underground storage tank immediately before the discontinuation of its use if not in use on August 28, 1989, or any person who owns an underground storage tank in use on or after August 28, 1989, and any person who owned an aboveground storage tank that was utilized for the sale of products regulated by chapter 414, RSMo, immediately before the discontinuation of its use if not in use on August 28, 1996, and any person who owns an aboveground storage tank utilized for the sale of products regulated by chapter 414, RSMo, in use on or after August 28, 1996. The term does not include any person who, without participating in the management of an aboveground storage tank or underground storage tank or both types of tanks, and otherwise not primarily engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect a security interest in or lien on the tank or the property where the tank is located;

(10) "Participating in management" does not include monitoring the operator's business, acquiring title in lieu of a foreclosure or other agreement in settlement of the operator's or property owner's debt;

(11) "Person", any individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, the state and its political subdivisions, or any interstate body. "Person" also includes any consortium, joint venture, commercial entity, and the government of the United States;

(12) "Petroleum" shall mean gasoline, kerosene, diesel, lubricants and fuel oil;

(13) "Petroleum storage tank", an aboveground storage tank or an underground storage tank used to contain an accumulation of petroleum. The term does not include those tanks described in paragraphs (a) to (k) of subdivision (16) of this section;

(14) "Regulated substance" includes:

(a) Any substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (P.L. 96-510), as amended, but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act of 1976 (P.L.

Regulated Substances

94-580), as amended; and

(b) Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure, sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute, respectively; and

(c) Any substance adopted by rule in accordance with federal laws referenced by Section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (P.L. 96-510);

(15) "Release" includes, but is not limited to, any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a petroleum storage tank into groundwater, surface water, or subsurface soils;

(16) "Underground storage tank", any one or combination of tanks, including pipes connected thereto, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. The department shall adopt, delete or modify exemptions established in this subdivision to any modifications, additions or deletions made by the Environmental Protection Agency. Exemptions from this definition and regulations promulgated under the provisions of sections 319.100 to 319.137 include:

(a) Farm or residential tank of eleven hundred gallons or less used for storing motor fuel for noncommercial purposes;

(b) Tanks used for storing heating oil for consumptive use on the premises where stored;

(c) Septic tanks;

(d) Pipeline facilities, including gathering lines, regulated under:

a. The federal Natural Gas Pipeline Safety Act of 1968 (P.L. 90-481), as amended; or

b. The federal Hazardous Liquid Pipeline Act of 1979 (P.L. 96-129), as amended;

(e) Pipeline facilities regulated under state laws comparable to the provisions of law referred to in paragraph (d) of this subdivision;

(f) Surface impoundments, pits, ponds, or lagoons;

(g) Storm water or wastewater collection systems;

(h) Flow-through process tanks;

(i) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and

(j) Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; and

(k) Transformers, circuit breakers or other electrical equipment.

(L. 1989 H.B. 77, et al. § 1, A.L. 1991 S.B. 204, A.L. 1993 S.B. 80, et al., A.L. 1996 S.B. 708, A.L. 1998 S.B. 852 & 913)

Effective 1-1-99

319.103. Tank owners to register with department of natural resources, information required--exceptions--forms--out of service tanks permanently or temporarily, required information and registration --sale of tanks, seller to inform purchaser of registration duties.--

1. Within ninety days after August 28, 1989, each owner of an existing underground storage tank currently in operation, including any tank which is temporarily out of service, who has not previously provided notification, shall register such tank with the department and specify the age, size, type, location, and uses of such tank.

2. Within ninety days after August 28, 1989, the owner of an existing underground storage tank taken out of operation between January 1, 1974, and August 28, 1989, shall register such tank with the department and specify the age, size, type, location, and uses of such tank.

3. Any owner who brings an underground storage tank into use after August 28, 1989, shall register

such tank with the department within thirty days after the tank is brought into use and specify the age, size, type, location and uses of such tank.

4. The requirements of subsections 1 to 3 of this section shall not apply to tanks for which notice was given pursuant to section 103(c) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510).

5. Registration required by subsections 1 to 3 of this section shall be made on approved forms made available by the department.

6. The owner of any tank identified in subsections 1 to 3 of this section, or for which notice was given pursuant to either section 103(c) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (P.L. 96-510), as amended, or section 9002(a) of subtitle I of the federal Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, that is permanently closed pursuant to section 319.111, shall notify the department in writing within thirty days prior to closure. Notice shall include the following information:

(1) The date on or after the tank would be taken out of operation;

(2) The age of the tank on the date taken out of operation;

(3) Any identification number for the tank as provided pursuant to subsections 1 to 3 of this section;

(4) The size, type, and location of the tank; and

(5) The type of substance or substances which the tank was used to store.

7. Any owner who has provided the department with underground storage tank inventory information in compliance with the notification requirements of section 9002(a) of subtitle I of the federal Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, shall be deemed to be in compliance with subsections 1 to 3 of this section.

8. Any person who deposits a regulated substance in an underground storage tank shall, following August 28, 1989, upon the first two deposits, notify the owner or operator in writing of his obligations under sections 319.103 to 319.137.

9. Any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of the tank in writing of the owner's notification requirements pursuant to this section.

(L. 1989 H.B. 77, et al. § 2)

319.105. Standards to be developed by department for all new tanks and for upgrading existing tanks--no tanks to be installed until standards established, exceptions.--

1. The department shall issue performance standards for underground storage tanks brought into use after August 28, 1989, and for upgrading existing underground storage tanks. The performance standards shall include, but shall not be limited to, design, construction, installation, piping, release detection, operation, and compatibility standards.

2. Until the standards promulgated by the department in subsection 1 of this section become effective, no person may install an underground storage tank for the purpose of storing or dispensing regulated substances unless:

(1) The tank will prevent releases of the stored regulated substances due to corrosion or structural failure for the operational life of the tank;

(2) The tank is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of the stored regulated substance; and

(3) The tank has a* primary system of containment. The department may specify by rule the specific conditions and circumstances under which a secondary containment system may be required.

3. The operator shall ensure that the material used in the construction or lining of the tank is

compatible with the substance to be stored.

(L. 1989 H.B. 77, et al. § 3)
*Word "a" does not appear in original rolls.

319.107. Leak detection system and inventory control system, standards of performance and records, department to establish--owner to be reimbursed for testing and monitoring costs from storage tank insurance fund.--

The department shall establish standards of performance for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment. The department shall establish requirements for maintaining records of any such monitoring, leak detection, inventory control, or tank testing system. An owner or operator of an underground storage tank, including an out-of-service or nonoperational tank, not found to be the source of a release for which the department has ordered nonroutine testing, who cooperates with the department, shall be reimbursed for all reasonable direct costs, as determined by the director, related to the testing and monitoring costs associated with the detection of the alleged release incurred by such owner or operator, out of the underground storage tank insurance fund.

(L. 1989 H.B. 77, et al. § 4, A.L. 1994 H.B. 1156)

319.109. Releases and corrective actions to be reported, standards.--

The department shall establish requirements for the reporting of any releases and corrective action taken in response to a release from an underground storage tank, including the specific quantity of a regulated substance, which if released, requires reporting and corrective action. In so doing, the department shall use risk-based corrective standards which take into account the level of risk to public health and the environment associated with site-specific conditions and future land usage.

(L. 1989 H.B. 77, et al. § 5, A.L. 1995 H.B. 251)

319.111. Closure of tanks, requirements--notice--department to establish.--

The department shall establish requirements for the closure of tanks, including notice prior to closure, to prevent future releases of regulated substances to the environment.

(L. 1989 H.B. 77, et al. § 6)

319.114. Evidence of financial responsibility required to cover certain damages --rules to be established by department.--

1. The department shall establish rules requiring the owner or operator to maintain evidence of financial responsibility in an amount and form sufficient for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of an underground storage tank.

2. The form of the evidence of financial responsibility required by this section may be by any one, or any combination, of the following methods: cash trust fund, guarantee, insurance, surety or performance bond, letter of credit, qualification as a self-insurer, or any other method satisfactory to the department.

In adopting requirements under this section, the department may specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing the evidence of financial responsibility.

3. The amount of financial responsibility required shall not exceed the amount required for compliance with section 9003 of subtitle I of the federal Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended.

4. The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other state or federal statutory, contractual, or common law liability of a guarantor to its owner or operator, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (P.L. 96-510), as amended, or other applicable law.

(L. 1989 H.B. 77, et al. § 7)

319.117. Information and records to be available to department for inspection, monitoring and testing--certain information to be confidential and not available to the public--department of agriculture to conduct inspections.--

1. For the purposes of developing or assisting in the development of any regulation, conducting any study, or enforcing the provisions of sections 319.100 to 319.137, any owner or operator of an underground storage tank shall, upon the request of any duly authorized officer, employee or representative of the department, furnish information relating to such tanks, including tank equipment and contents, conduct monitoring or testing, and permit the designated officer at all reasonable times to have access to, and to copy, all records relating to such tanks. For the purposes of developing or assisting in the development of any regulation, conducting any study, enforcing the provisions of this section, or conducting any corrective action authorized in sections 319.100 to 319.137, such officers, employees, or representatives may:

(1) Enter at reasonable times any establishment or place where an underground storage tank is located or where records pertaining to underground storage tanks are located;

(2) Inspect and obtain samples from any person of any regulated substances contained in such tank; and

(3) Conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water, or ground water. Each inspection shall be commenced and completed with reasonable promptness.

2. Any records, reports, or information obtained from any persons under this section shall be available to the public except as provided in this subsection. Upon a showing satisfactory to the department that public disclosure of records, reports, or information, or a particular part thereof, to which the department officer, employee, or representative has access under this section would divulge commercial or financial information entitled to protection under state law, the department shall consider such information or a particular portion thereof to be confidential. However, the document or information may be disclosed to officers, employees, or authorized representatives of the state or of the United States, who have been charged with carrying out this act or subtitle I of the federal Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, or when relevant in any proceeding under sections 319.100 to 319.137.

3. The department shall, subject to appropriations, enter into an interagency agreement with the

department of agriculture to authorize inspectors from the department of agriculture to conduct inspections under sections 319.100 to 319.137 in conjunction with those required under chapter 414, RSMo.

(L. 1989 H.B. 77, et al. § 8)

319.120. Certificate of registration required--issued when--term of certificate --application, forms--owner may operate prior to certification until issue or denial.--

1. Except as provided for in sections 319.100 to 319.137, no person shall own or operate an underground storage tank unless a certificate of registration for its operation has been issued by the department. A certificate of registration shall be issued by the department when the applicant demonstrates compliance with the provisions of sections 319.100 to 319.137.

2. The department shall issue an initial certificate of registration for each underground storage tank the term for which shall not exceed five years. Certificate renewals shall be issued for a fixed term of five years.

3. Applications for certificates of registration and certificate renewals shall be made on forms prescribed and made available by the department.

4. Within one hundred twenty days after August 28, 1989, the department shall provide owners with a copy of information submitted pursuant to the notification requirements of section 319.103, and shall specify any additional information required to comply with section 319.103.

5. Owners may apply for certificates of registration either through the submission of information required by the department in accordance with subsection 4 of this section, or through submission of information submitted pursuant to section 319.103. Until the department issues or denies a certificate of registration, owners who have applied for a certificate in accordance with the requirements of this section may operate the tank for which the application for certification has been made, provided that the owner and the operation of the tank are in compliance with sections 319.100 to 319.137.

(L. 1989 H.B. 77, et al. § 9 subsecs. 1 to 5)

319.123. Fee for certification, amount, deposit--underground storage tank regulation program fund established, purpose.--

Application for a certificate of registration shall be accompanied by a fee. The fee shall be fifteen dollars per tank per year assessed on a rotating basis during a five-year period. All fees collected under this subsection shall be placed in the "Underground Storage Tank Regulation Program Fund" which is hereby established in the state treasury. All moneys in the fund shall be used solely for expenses related to the administration of sections 319.100 to 319.137.

(L. 1989 H.B. 77, et al. § 9 subsec. 6)

319.125. Certificate denied or invalidated by department, procedure, grounds.--

1. The department may deny or invalidate a certificate of registration issued under sections 3 19.120 and 319.123 if the department finds, after notice and a hearing pursuant to chapter 644, RSMo, that the owner has:

(1) Fraudulently or deceptively registered or attempted to register a tank; or

(2) Failed at any time to comply with any provision or requirement of sections 319.100 to 319.137 or

any rules and regulations adopted by the department in accordance with the provisions of sections 319.100 to 319.137.

2. Upon the action of the department to invalidate or refuse to issue a certificate, the department shall advise the applicant of his right to have a hearing before the clean water commission. The hearing shall be conducted in accordance with the procedures established in chapter 644, RSMo.

3. When the department finds that a release from an underground storage tank presents, or is likely to present, an immediate threat to public health or safety or to the environment, it shall order correction of the problem, order cleanup or institute clean-up operations pursuant to the provisions of sections 260.500 to 260.550, RSMo.

4. If the owner or operator fails to perform or improperly performs any action required by the department to abate or eliminate an immediate threat to public health or safety or to the environment, the department or an authorized agent of the department may take any and all necessary action to abate or eliminate such threat. In addition to any other remedy or penalty provided by sections 319.100 to 319.137 or any other law, the owner or operator shall be held strictly liable for the reasonable costs incurred by the department in taking any such action.

5. The denial of reregistration or the revocation of registration of any person participating in the underground storage tank insurance fund shall, upon completion of any appeal, terminate participation in the fund.

(L. 1989 H.B. 77, et al. § 10)

319.127. Violations, procedure--penalty, disposition.--

1. It is unlawful for any owner or operator to cause or permit any violations of sections 319.100 to 319.137, or any standard, rule or regulation, order or permit term or condition adopted or issued hereunder. Except as provided in this section, whenever on the basis of any information, the department determines that any person is in such violation, the department may issue an order requiring compliance within a reasonable specified time period, pursuant to chapter 644, RSMo, or the department may commence a civil action in a court of competent jurisdiction in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

2. If an owner or operator fails to comply with an order under this section within the time specified, the department may commence a civil action in a court of competent jurisdiction for injunctive relief to prevent any such violation or further violation or for the assessment of a civil penalty not to exceed ten thousand dollars for each day, or part thereof, the violation occurred or continues to occur, or both, as the court deems proper. A civil monetary penalty under this section shall not be assessed for a violation where an administrative penalty was assessed under section 319.139. The department may request either the attorney general or a prosecuting attorney to bring any action authorized in this section in the name of the people of the state of Missouri. Any offer of settlement to resolve a civil penalty under this section shall be in writing, shall state that an action for imposition of a civil penalty may be initiated by the attorney general or a prosecuting attorney representing the department under authority of this section, and shall identify any dollar amount as an offer of settlement which shall be negotiated in good faith through conference, conciliation and persuasion.

3. Any penalty recovered pursuant to the provisions of this section shall be handled in accordance with section 7 of article IX of the state constitution.

4. If the department alleges a violation of law or regulation of sections 319.100 to 319.139, and mandates compliance with such law or regulation by a person or entity, the department shall provide the person or entity responsible for compliance with such law or regulation with written criteria detailing exactly what action is necessary for such person or entity to comply with the law or regulation. The

criteria shall include any time restrictions imposed by the department and shall be prima facie evidence of the action necessary for compliance with the law or regulation. Any person or entity meeting the criteria shall be deemed to be in full compliance with the requests of the department and evidence of compliance shall constitute an affirmative defense in any action brought by or on behalf of the department under the law or regulation. The criteria may not be amended by the department once issued to the person or entity responsible for compliance with such law or department regulation for three years from the date of issuance unless mandated by a change in state or federal law.

(L. 1989 H.B. 77, et al. § 11, A.L. 1992 H.B. 1745, A.L. 1993 S.B. 80, et al.)

319.129. Petroleum storage tank insurance fund created--lapse into general revenue prohibited--fee paid by all owners per tank to board--state treasurer may deposit funds where, interest credited to fund --administration of fund--board of trustees created, members, meetings--expires when--continuation after expiration, when.--

1. There is hereby created a special trust fund to be known as the "Petroleum Storage Tank Insurance Fund" within the state treasury which shall be the successor to the underground storage tank insurance fund. Moneys in such special trust fund shall not be deemed to be state funds. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the fund shall not be transferred to general revenue at the end of each biennium.

2. The owner or operator of any underground storage tank, including the state of Missouri and its political subdivisions and public transportation systems, in service on August 28, 1989, shall submit to the department a fee of one hundred dollars per tank on or before December 31, 1989. The owner or operator of any underground storage tank who seeks to participate in the petroleum storage tank insurance fund, including the state of Missouri and its political subdivisions and public transportation systems, and whose underground storage tank is brought into service after August 28, 1998, shall transmit one hundred dollars per tank to the board with his or her initial application. Such amount shall be a one-time payment, and shall be in addition to the payment required by section 319.133. The owner or operator of any aboveground storage tank regulated by this chapter, including the state of Missouri and its political subdivisions and public transportation systems, who seeks to participate in the petroleum storage tank insurance fund, shall transmit one hundred dollars per tank to the board with his or her initial application. Such amount shall be a one-time payment and shall be in addition to the payment required by section 319.133. Moneys received pursuant to this section shall be transmitted to the director of revenue for deposit in the petroleum storage tank insurance fund.

3. The state treasurer may deposit moneys in the fund in any of the qualified depositories of the state. All such deposits shall be secured in a manner and upon the terms as are provided by law relative to state deposits. Interest earned shall be credited to the petroleum storage tank insurance fund.

4. The general administration of the fund and the responsibility for the proper operation of the fund, including all decisions relating to payments from the fund, are hereby vested in a board of trustees. The board of trustees shall consist of the commissioner of administration or the commissioner's designee, the director of the department of natural resources or the director's designee, the director of the department of agriculture or the director's designee, and eight citizens appointed by the governor with the advice and consent of the senate. Three of the appointed members shall be owners or operators of retail petroleum storage tanks, including one tank owner or operator of greater than one hundred tanks; one tank owner or operator of less than one hundred tanks; and one aboveground storage tank owner or operator. One appointed trustee shall represent a financial lending institution, and one appointed trustee shall represent the insurance underwriting industry. One appointed trustee shall represent industrial or commercial users of petroleum. The two remaining appointed citizens shall have no petroleum-related business interest,

and shall represent the nonregulated public at large. The members appointed by the governor shall serve four-year terms except that the governor shall designate two of the original appointees to be appointed for one year, two to be appointed for two years, two to be appointed for three years and two to be appointed for four years. Any vacancies occurring on the board shall be filled in the same manner as provided in this section.

5. The board shall meet in Jefferson City, Missouri, within thirty days following August 28, 1996. Thereafter, the board shall meet upon the written call of the chairman of the board or by the agreement of any six members of the board. Notice of each meeting shall be delivered to all other trustees in person or by registered mail not less than six days prior to the date fixed for the meeting. The board may meet at any time by unanimous mutual consent. There shall be at least one meeting in each quarter.

6. Six trustees shall constitute a quorum for the transaction of business, and any official action of the board shall be based on a majority vote of the trustees present.

7. The trustees shall serve without compensation but shall receive from the fund their actual and necessary expenses incurred in the performance of their duties for the board.

8. All staff resources for the Missouri petroleum storage tank insurance fund shall be provided by the department of natural resources or another state agency as otherwise specifically determined by the board. The fund shall compensate the department of natural resources or other state agency for all costs of providing staff required by this subsection. Such compensation shall be made pursuant to contracts negotiated between the board and the department of natural resources or other state agency.

9. In order to carry out the fiduciary management of the fund, the board may select and employ, or may contract with, persons experienced in insurance underwriting, accounting, the servicing of claims and rate making, and legal counsel to defend third-party claims, who shall serve at the board's pleasure. Invoices for such services shall be presented to the board in sufficient detail to allow a thorough review of the costs of such services.

10. At the first meeting of the board, the board shall elect one of its members as chairman. The chairman shall preside over meetings of the board and perform such other duties as shall be required by action of the board.

11. The board shall elect one of its members as vice chairman, and the vice chairman shall perform the duties of the chairman in the absence of the latter or upon the chairman's inability or refusal to act.

12. The board shall determine and prescribe all rules and regulations as they relate to fiduciary management of the fund, pursuant to the purposes of sections 319.100 to 319.137. In no case shall the board have oversight regarding environmental cleanup standards for petroleum storage tanks.

13. No trustee or staff member of the fund shall receive any gain or profit from any moneys or transactions of the fund. This shall not preclude any eligible trustee from making a claim or receiving benefits from the petroleum storage tank insurance fund as provided by sections 319.100 to 319.137.

14. The board may reinsure all or a portion of the fund's liability. Any insurer who sells environmental liability insurance in this state may, at the option of the board, reinsure some portion of the fund's liability.

15. The petroleum storage tank insurance fund shall expire on December 31, 2010, or upon revocation of federal regulation 40 CFR Parts 280 and 285, whichever occurs first, unless extended by action of the general assembly. After December 31, 2010, the board of trustees may continue to function for the sole purpose of completing payment of claims made prior to December 31, 2010.

16. The board shall annually commission an independent financial audit of the petroleum storage tank insurance fund. The board shall biennially commission an actuarial analysis of the petroleum storage tank insurance fund. The results of the financial audit and the actuarial analysis shall be made available to the public. The board may contract with third parties to carry out the requirements of this subsection.

(L. 1989 H.B. 77, et al. § 12 subsecs. 1 to 4, A.L. 1991 S.B. 91 & 317, A.L. 1996 S.B. 708, A.L. 1998 H.B.

1148, A.L. 2001 H.B. 453)

319.131. Owners of tanks containing petroleum products may elect to participate--advisory committee, members, duties, applications, content, standards and tests--financial responsibility--deductible --fund not liability of state--ineligible sites--tanks owned by certain school districts--damages covered, limitation--defense of third-party claims.--

1. Any owner or operator of one or more petroleum storage tanks may elect to participate in the petroleum storage tank insurance fund to partially meet the financial responsibility requirements of sections 319.100 to 319.137. Subject to regulations of the board of trustees, owners or operators may elect to continue their participation in the fund subsequent to the transfer of their property to another party. Current or former refinery sites or petroleum pipeline or marine terminals are not eligible for participation in the fund.

2. The board shall establish an advisory committee which shall be composed of insurers and owners and operators of petroleum storage tanks. The advisory committee established pursuant to this subsection shall report to the board. The committee shall monitor the fund and recommend statutory and administrative changes as may be necessary to assure efficient operation of the fund. The committee, in consultation with the board and the department of insurance, shall annually report to the general assembly on the availability and affordability of the private insurance market as a viable method of meeting the financial responsibilities required by state and federal law in lieu of the petroleum storage tank insurance fund.

3. (1) Except as otherwise provided by this section, any person seeking to participate in the insurance fund shall submit an application to the board of trustees and shall certify that the petroleum tanks meet or exceed and are in compliance with all technical standards established by the United States Environmental Protection Agency, except those standards and regulations pertaining to spill prevention control and counter-measure plans, and rules established by the Missouri department of natural resources and the Missouri department of agriculture. The applicant shall submit proof that the applicant has a reasonable assurance of the tank's integrity. Proof of tank integrity may include but not be limited to any one of the following: tank tightness test, electronic leak detection, monitoring wells, daily inventory reconciliation, vapor test or any other test that may be approved by the director of the department of natural resources or the director of the department of agriculture. The applicant shall submit evidence that the applicant can meet all applicable financial responsibility requirements of this section.

(2) A creditor, specifically a person who, without participating in and not otherwise primarily engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily for the purpose of, or in connection with, securing payment or performance of a loan or to protect a security interest in or lien on the tank or the property where the tank is located, or serves as trustee or fiduciary upon transfer or receipt of the property, may be a successor in interest to a debtor pursuant to this section, provided that the creditor gives notice of the interest to the insurance fund by certified mail, return receipt requested. Part of such notice shall include a copy of the lien, including but not limited to a security agreement or a deed of trust as appropriate to the property. The term "successor in interest" as provided in this section means a creditor to the debtor who had qualified real property in the insurance fund prior to the transfer of title to the creditor, and the term is limited to access to the insurance fund. The creditor may cure any of the debtor's defaults in payments required by the insurance fund, provided the specific real property originally qualified pursuant to this section. The creditor, or the creditor's subsidiary or affiliate, who forecloses or otherwise obtains legal title to such specific real property held as collateral for loans, guarantees or other credit, and which includes the debtor's aboveground storage tanks or underground storage tanks, or both such tanks shall provide notice to the fund of any transfer of creditor to subsidiary or affiliate. Liability pursuant to sections 319.100 to 319.137 shall be confined to

such creditor or such creditor's subsidiary or affiliate. A creditor shall apply for a transfer of coverage and shall present evidence indicating a lien, contractual right, or operation of law permitting such transfer, and may utilize the creditor's affiliate or subsidiary to hold legal title to the specific real property taken in satisfaction of debts. Creditors may be listed as insured or additional insured on the insurance fund, and not merely as mortgagees, and may assign or otherwise transfer the debtor's rights in the insurance fund to the creditor's affiliate or subsidiary, notwithstanding any limitations in the insurance fund on assignments or transfer of the debtor's rights.

(3) Any person participating in the fund shall annually submit an amount established pursuant to subsection 1 of section 319.133 which shall be deposited to the credit of the petroleum storage tank insurance fund.

4. Any person making a claim pursuant to this section and sections 319.129 and 319.133 shall be liable for the first ten thousand dollars of the cost of cleanup associated with a release from a petroleum storage tank without reimbursement from the fund. The petroleum storage tank insurance fund shall assume all costs, except as provided in subsection 5 of this section, which are greater than ten thousand dollars but less than one million dollars per occurrence or two million dollars aggregate per year. The liability of the petroleum storage tank insurance fund is not the liability of the state of Missouri. The provisions of sections 319.100 to 319.137 shall not be construed to broaden the liability of the state of Missouri beyond the provisions of sections 537.600 to 537.610, RSMo, nor to abolish or waive any defense which might otherwise be available to the state or to any person. The presence of existing contamination at a site where a person is seeking insurance in accordance with this section shall not affect that person's ability to participate in this program, provided the person meets all other requirements of this section. Any person who qualifies pursuant to sections 319.100 to 319.137 and who has requested approval of a project for remediation from the fund, which request has not yet been decided upon shall annually be sent a status report including an estimate of when the project may expect to be funded and other pertinent information regarding the request.

5. The fund shall provide coverage for third-party claims involving property damage or bodily injury caused by leaking petroleum storage tanks whose owner or operator is participating in the fund at the time the release occurs or is discovered. Coverage for third-party bodily injury shall not exceed one million dollars per occurrence. Coverage for third-party property damage shall not exceed one million dollars per occurrence. The fund shall not compensate an owner or operator for repair of damages to property beyond that required to contain and clean up a release of a regulated substance or compensate an owner or operator or any third party for loss or damage to other property owned or belonging to the owner or operator, or for any loss or damage of an intangible nature, including, but not limited to, loss or interruption of business, pain and suffering of any person, lost income, mental distress, loss of use of any benefit, or punitive damages.

6. The fund shall, within limits specified in this section, assume costs of third-party claims and cleanup of contamination caused by releases from petroleum storage tanks. The fund shall provide the defense of eligible third-party claims including the negotiations of any settlement.

7. Nothing contained in sections 319.100 to 319.137 shall be construed to abrogate or limit any right, remedy, causes of action, or claim by any person sustaining personal injury or property damage as a result of any release from any type of petroleum storage tank, nor shall anything contained in sections 319.100 to 319.137 be construed to abrogate or limit any liability of any person in any way responsible for any release from a petroleum storage tank or any damages for personal injury or property damages caused by such a release.

8. (1) The fund shall provide moneys for cleanup of contamination caused by releases from petroleum storage tanks, the owner or operator of which is participating in the fund or the owner or operator of which has made application for participation in the fund by December 31, 1997, regardless of when such release occurred, provided that those persons who have made application are ultimately

accepted into the fund. Applicants shall not be eligible for fund benefits until they are accepted into the fund. This section shall not preclude the owner or operator of petroleum storage tanks coming into service after December 31, 1997, from making application to and participating in the petroleum storage tank insurance fund.

(2) Notwithstanding the provisions of section 319.100 and the provisions of subdivision (1) of this section, the fund shall provide moneys for cleanup of contamination caused by releases from petroleum storage tanks owned by school districts all or part of which are located in a county of the third classification without a township form of government and having a population of more than ten thousand seven hundred but less than eleven thousand inhabitants, and which make application for participation in the fund by August 28, 1999, regardless of when such release occurred. Applicants shall not be eligible for fund benefits until they are accepted into the fund, and costs incurred prior to that date shall not be eligible expenses.

9. (1) The fund shall provide moneys for cleanup of contamination caused by releases from underground storage tanks which contained petroleum and which have been taken out of use prior to December 31, 1997, provided such sites have been documented by or reported to the department of natural resources prior to December 31, 1997, and provided further that the fund shall make no reimbursements for expenses incurred prior to August 28, 1995. The fund shall also provide moneys for cleanup of contamination caused by releases from underground storage tanks which contained petroleum and which have been taken out of use prior to December 31, 1985, if the current owner of the real property where the tanks are located purchased such property before December 31, 1985, provided such sites are reported to the fund on or before June 30, 2000. The fund shall make no payment for expenses incurred at such sites prior to August 28, 1999. Nothing in sections 319.100 to 319.137 shall affect the validity of any underground storage tank fund insurance policy in effect on August 28, 1996.

(2) An owner or operator who submits a request as provided in this subsection is not required to bid the costs and expenses associated with professional environmental engineering services. The board may disapprove all or part of the costs and expenses associated with the environmental engineering services if the costs are excessive based upon comparable service costs or current market value of similar services. The owner or operator shall solicit bids for actual remediation and cleanup work as provided by rules of the board.

10. The fund shall provide moneys for cleanup of contamination caused by releases from aboveground storage tanks utilized for the sale of products regulated by chapter 414, RSMo, which have been taken out of use prior to December 31, 1997, provided such sites have been documented by or reported to the department of natural resources prior to December 31, 1997, and provided further that the fund shall make no reimbursements for expenses incurred prior to July 1, 1997.

(L. 1989 H.B. 77, et al. § 12 subsecs. 5 to 9, A.L. 1991 S.B. 91 & 317, A.L. 1994 H.B. 1156, A.L. 1995 H.B. 251, A.L. 1996 S.B. 708, A.L. 1998 H.B. 1148 merged with S.B. 852 & 913, A.L. 1999 H.B. 603, et al., A.L. 2001 H.B. 453)

319.132. Board of trustees to assess surcharge on petroleum products per transport load, exceptions, deposit in fund, refund procedure--rate of surcharge--suspension of fees, when.--

1. The board shall assess a surcharge on all petroleum products within this state which are enumerated by section 414.032, RSMo. Except as specified by this section, such surcharge shall be administered pursuant to the provisions of subsections 1 to 3 of section 414.102, RSMo, and subsections 1 and 2 of section 414.152, RSMo. Such surcharge shall be imposed upon such petroleum products within this state and shall be assessed on each transport load, or the equivalent of an average transport load if moved by other means. All revenue generated by the assessment of such surcharges shall be

deposited to the credit of the special trust fund known as the petroleum storage tank insurance fund.

2. Any person who claims to have paid the surcharge in error may file a claim for a refund with the board within three years of the payment. The claim shall be in writing and signed by the person or the person's legal representative. The board's decision on the claim shall be in writing and may be delivered to the person by first class mail. Any person aggrieved by the board's decision may seek judicial review by bringing an action against the board in the circuit court of Cole County pursuant to section 536.150, RSMo, no later than sixty days following the date the board's decision was mailed. The department of revenue shall not be a party to such proceeding.

3. The board shall assess and annually reassess the financial soundness of the petroleum storage tank insurance fund.

4. (1) The board shall set, in a public meeting with an opportunity for public comment, the rate of the surcharge that is to be assessed on each such transport load or equivalent but such rate shall be no more than sixty dollars per transport load or an equivalent thereof. A transport load shall be deemed to be eight thousand gallons.

(2) The board may increase or decrease the surcharge, up to a maximum of sixty dollars, only after giving at least sixty days' notice of its intention to alter the surcharge; provided however, the board shall not increase the surcharge by more than fifteen dollars in any year. The board must coordinate its actions with the department of revenue to allow adequate time for implementation of the surcharge change.

(3) If the fund's cash balance on the first day of any month exceeds the sum of its liabilities, plus ten percent, the transport load fee shall automatically revert to twenty-five dollars per transport load on the first day of the second month following this event.

(4) Moneys generated by this surcharge shall not be used for any purposes other than those outlined in sections 319.129 through 319.133 and section 319.138. Nothing in this subdivision shall limit the board's authority to contract with the department of natural resources pursuant to section 319.129 to carry out the purposes of the fund as determined by the board.

5. The board shall ensure that the fund retain a balance of at least twelve million dollars but not more than one hundred million dollars. If, at the end of any quarter, the fund balance is above one hundred million dollars, the treasurer shall notify the board thereof. The board shall suspend the collection of fees pursuant to this section beginning on the first day of the first quarter following the receipt of notice. If, at the end of any quarter, the fund balance is below twenty million dollars, the treasurer shall notify the board thereof. The board shall reinstate the collection of fees pursuant to this section beginning on the first day of the first quarter following the receipt of notice.

6. Railroad corporations as defined in section 388.010, RSMo, and airline companies as defined in section 155.010, RSMo, shall not be subject to the load fee described in this chapter nor permitted to participate in or make claims against the petroleum storage tank insurance fund created in section 319.129.

(L. 1991 S.B. 91 & 317, A.L. 1995 H.B. 251, A.L. 1996 S.B. 708, A.L. 1998 S.B. 619, A.L. 2001 H.B. 453)

(1995) Where an underground storage tank insurance fund is financed by fees imposed upon "persons" who first receive petroleum products within Missouri and not to "persons" who operate underground storage tanks, the application of section's surcharge violates the commerce clause of the United States Constitution. Surcharge is a fee and not a tax. Reidy Terminal, Inc. v. Director of Revenue, 898 S.W.2d 540 (Mo. en banc).

319.133. Annual payments by owners, amount established by rule, limitation --change of ownership, no new fee required--installment payments authorized, when--applicable rules.--

1. The board shall, in consultation with the advisory committee established pursuant to subsection 2 of section 319.131, establish, by rule, the amount which each owner or operator who participates in the

fund shall pay annually into the fund, but such amount shall not exceed the limits established in this section.

2. Each participant shall annually pay an amount which shall be at least one hundred dollars per year but not more than three hundred dollars per year for any tank, as established by the board by rule.

3. No new registration fee is required for a change of ownership of a petroleum storage tank.

4. The board shall establish procedures where persons owning fifty or more petroleum storage tanks may pay any fee established pursuant to subsection 1 of this section in installments.

5. All rules applicable to the former underground storage tank insurance fund not inconsistent with the provisions of sections 319.100 to 319.137 shall apply to the petroleum storage tank insurance fund as of August 28, 1996.

(L. 1989 H.B. 77, et al. § 12 subsecs. 10, 11, A.L. 1991 S.B. 91 & 317, A.L. 1996 S.B. 708, A.L. 1998 H.B. 1148, A.L. 2001 H.B. 453)

319.135. No liability for release of petroleum at direction of coordinator, exception.--

No person shall be liable under sections 319.100 to 319.137 for damages as a result of actions taken or omitted in the course of rendering care, assistance or advice at the direction of a coordinator appointed by the department, with respect to an incident creating a danger to the public health or welfare or the environment as a result of any release of petroleum substances or the threat thereof. This section shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person or for reckless, willful, or wanton misconduct.

(L. 1989 H.B. 77, et al. § 13)

***319.137. Rules, authority to adopt federal rules or to provide more stringent rules, when--procedure to promulgate.--**

Rules and regulations promulgated by the United States Environmental Protection Agency under subtitle I of the federal Resource Conservation Recovery Act of 1976 (P.L. 94-580), as amended, may be adopted by the department by reference. The department may adopt rules and regulations that are more stringent than those issued by the United States Environmental Protection Agency if such rules or regulations are necessary to protect human health or the environment. Any such rule shall be adopted only after due notice and public hearing in accordance with the provisions of this section, chapter 536, RSMo, and chapter 644, RSMo. No rule or portion of a rule promulgated under the authority of sections 319.100 to 319.139 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

(L. 1989 H.B. 77, et al. § 14, A.L. 1993 S.B. 52, A.L. 1995 S.B. 3)

*This section was amended by both S.B. 3 and H.B. 251 during the 1st Regular Session of the 88th General Assembly, 1995. Due to possible conflict, both versions are printed here.

***319.137. Rules, authority to adopt federal rules or to provide more stringent rules, when--procedure to promulgate, submission for review --rulemaking authority invalid, when.--**

1. Rules and regulations promulgated by the United States Environmental Protection Agency under subtitle I of the federal Resource Conservation Recovery Act of 1976 (P.L. 94-580), as amended, may be adopted by the department by reference. The department may adopt rules and regulations that are more stringent than those issued by the United States Environmental Protection Agency if such rules or

regulations are necessary to protect human health or the environment. Rules and regulations promulgated under sections 319.100 to 319.139 shall be submitted to and reviewed by the advisory committee established by subsection 2 of section 319.131 prior to publication. Any such rule shall be adopted only after due notice and public hearing in accordance with the provisions of this section, chapter 536, RSMo, and chapter 644, RSMo.

2. No rule or portion of a rule promulgated under the authority of sections 319.100 to 319.139 shall become effective until it has been approved by the joint committee on administrative rules in accordance with the procedures provided herein, and the delegation of the legislative authority to enact law by the adoption of such rules is dependent upon the power of the joint committee on administrative rules to review and suspend rules pending ratification by the senate and the house of representatives as provided herein.

3. Upon filing any proposed rule with the secretary of state, the filing agency shall concurrently submit such proposed rule to the committee, which may hold hearings upon any proposed rule or portion thereof at any time.

4. A final order of rulemaking shall not be filed with the secretary of state until thirty days after such final order of rulemaking has been received by the committee. The committee may hold one or more hearings upon such final order of rulemaking during the thirty-day period. If the committee does not disapprove such order of rulemaking within the thirty-day period, the filing agency may file such order of rulemaking with the secretary of state and the order of rulemaking shall be deemed approved.

5. The committee may, by majority vote of the members, suspend the order of rulemaking or portion thereof by action taken prior to the filing of the final order of rulemaking only for one or more of the following grounds:

(1) An absence of statutory authority for the proposed rule;

(2) An emergency relating to public health, safety or welfare;

(3) The proposed rule is in conflict with state law;

(4) A substantial change in circumstance since enactment of the law upon which the proposed rule is based;

(5) That the rule is arbitrary and capricious.

6. If the committee disapproves any rule or portion thereof, the filing agency shall not file such disapproved portion of any rule with the secretary of state and the secretary of state shall not publish in the Missouri Register any final order of rulemaking containing the disapproved portion.

7. If the committee disapproves any rule or portion thereof, the committee shall report its findings to the senate and the house of representatives. No rule or portion thereof disapproved by the committee shall take effect so long as the senate and the house of representatives ratify the act of the joint committee by resolution adopted in each house within thirty legislative days after such rule or portion thereof has been disapproved by the joint committee.

8. Upon adoption of a rule as provided herein, any such rule or portion thereof may be suspended or revoked by the general assembly either by bill or, pursuant to section 8, article IV of the constitution, by concurrent resolution upon recommendation of the joint committee on administrative rules. The committee shall be authorized to hold hearings and make recommendations pursuant to the provisions of section 536.037, RSMo. The secretary of state shall publish in the Missouri Register, as soon as practicable, notice of the suspension or revocation.

(L. 1989 H.B. 77, et al. § 14, A.L. 1993 S.B. 52, A.L. 1995 H.B. 251)

*This section was amended by both H.B. 251 and S.B. 3 during the 1st Regular Session of the 88th General Assembly, 1995. Due to possible conflict, both versions are printed here.

319.138. Fund shall provide moneys for cleanup of petroleum storage tank contamination, when.-- Notwithstanding the provisions of section 319.100 and subdivision (1) of subsection 3 of section 319.131, the fund shall provide moneys for cleanup of contamination caused by the releases from piping or related equipment of a petroleum storage tank with a capacity of five thousand gallons or less when such retailer is the sole provider of retail fuels within a five-mile area. The costs of the cleanup must be incurred after April 1, 1999, and prior to April 1, 2000. The retailer must make application for participation in the fund by August 28, 1999.

(L. 1999 H.B. 603, et al. § 3)

319.139. Administrative penalties, assessment, procedure--rules--payment, appeal--collection.--

1. In addition to any other remedy provided by law, upon a determination by the director that a provision of sections 319.100 to 319.137 or a standard, limitation, order, rule or regulation promulgated pursuant thereto, or a term or condition of any permit has been violated, the director may issue an order assessing an administrative penalty upon the violator under this section. An administrative penalty shall not be imposed until the director has sought to resolve the violation through conference, conciliation or persuasion and shall not be imposed for minor violations of sections 319.100 to 319.137 or minor violations of any standard, limitation, order, rule or regulation promulgated pursuant to sections 319.100 to 319.137 or minor violations of any term or condition of a permit issued pursuant to sections 319.100 to 319.137. If the violation is resolved through conference, conciliation and persuasion, no administrative penalty shall be assessed unless the violation has caused, or has the potential to cause, a risk to human health or to the environment, or has caused or has potential to cause pollution, or was knowingly committed, or is defined by the United States Environmental Protection Agency as other than minor. Any order assessing an administrative penalty shall state that an administrative penalty is being assessed under this section and that the person subject to the penalty may appeal as provided by this section. Any such order that fails to state the statute under which the penalty is being sought, the manner of collection or rights of appeal shall result in the state's waiving any right to collection of the penalty.

2. The clean water commission shall promulgate rules and regulations for the assessment of administrative penalties. The amount of the administrative penalty assessed per day of violation for each violation under this section shall not exceed the amount of the civil penalty specified in section 319.127. Such rules shall reflect the criteria used for the administrative penalty matrix as provided for in the Resource Conservation and Recovery Act, 42 U.S.C. 6928(a), Section 3008(a), and the harm or potential harm which the violation causes, or may cause, the violator's previous compliance record, and any other factors which the clean water commission may reasonably deem relevant. An administrative penalty shall be paid within sixty days from the date of issuance of the order assessing the penalty. Any person subject to an administrative penalty may appeal to the commission as provided in section 644.056, RSMo. An appeal will stay the due date of such administrative penalty until the appeal is resolved. Any person who fails to pay an administrative penalty by the final due date shall be liable to the state for a surcharge of fifteen percent of the penalty plus ten percent per annum on any amounts owed. Any administrative penalty paid pursuant to this section shall be handled in accordance with section 7 of article IX of the state constitution. An action may be brought in the appropriate circuit court to collect any unpaid administrative penalty, and for attorney's fees and costs incurred directly in the collection thereof.

3. An administrative penalty shall not be increased in those instances where department action, or failure to act, has caused a continuation of the violation that was a basis for the penalty. Any administrative penalty must be assessed within two years following the department's initial discovery of such alleged violation, or from the date the department in the exercise of ordinary diligence should have

discovered such alleged violation.

4. Any final order imposing an administrative penalty is subject to judicial review upon the filing of a petition pursuant to section 536.100, RSMo, by any person subject to the administrative penalty.

5. The state may elect to assess an administrative penalty, or, in lieu thereof, to request that the attorney general or prosecutor file an appropriate legal action seeking a civil penalty in the appropriate circuit court.

(L. 1991 S.B. 45, A.L. 1993 S.B. 80, et al.)

EARTHQUAKES--SEISMIC BUILDING AND CONSTRUCTION ORDINANCES